

Business Roundtable Meeting Notes

February 12, 2004

Meeting Attendees:

R. Hittinger, G. Meyers, D. Moon, Viera, H. Luchsa (EDC), T. O'Connor, A. Willoughby, M. Staff, J. Marischal, Gallagher, A. Yatsko, Laura?
DEM: J. Keller, T. Gray, E. Stone, R. Ballou, G. McAvoy, A. Liberti, R. Gagnon, T. Getz, F. Vincent

Old Business:

a. Review of December Meeting Notes

The December meeting notes were accepted as written

b. Budget Update

Fred Vincent reported that the Governor will present the budget on the February 25th State of the State Address. The Department was able to use a large settlement and the sale of land to offset the \$3.2 million reduction called for to meet the target of 10% in State general revenue. The governor's budget restored a \$1million gap and layoffs were avoided at DEM.

The staffing cap was reduced from 539 to 538, so the Department is still minimally staffed and many challenges remain. The Governor is looking to consolidate state government to reduce the rate at which the budget is growing. Potential changes from Fiscal Fitness, ie, water consolidation will take longer.

c. RISEP Update on Marginal Risk Policy

Rich Hittinger provided the group with a brief update on the Marginal Risk Policy. He indicated that RISEP members met and suggested changes to the existing policy that would reduce paperwork and would broaden the coverage so additional sites would be able to use the policy. He indicated that he forwarded this proposal to DEM and is awaiting response from DEM and would like to meet on this proposal. Terry Gray indicated he also is interested in opening up the process for more sites. He indicated the proposal was not what DEM expected and would take a bit longer to review.

d. RIPDES Update

Angelo Liberti discussed the status of the RIPDES program. He indicated that he is participating in an EPA review of the program. This review will outline the performance of the state program in meeting national goals. Angelo made the following points in his presentation:

- RIDEM issued the MS4 regulations and they will be effective March 18th.
- DEM reduced the major permit backlog from 76% in 1999 to 12% by the end of 2001.
- The minor permit backlog has been reduced from 77% to 56% as of 1/31/04.

- DEM has not been informed of the formation of RI General Assembly oversight commission on the RIPDES program. Elizabeth Stone indicated that commission members have not been named.
- DEM is working with EPA on a multi-sector regulatory program. There will be a DEM proposal on this issue in the future.

Gary Ezovski indicated that DEM and the business community need to be on top of this issue.

e. Legislative Update:

Elizabeth Stone provided an update on Department sponsored bills:

- Increasing the maximum civil penalty for wetlands violations from a current maximum of \$1,000 per violation up to a maximum of \$10,000 per violation. Under the proposed bill, penalties between \$5,000 and \$10,000 per violation could only be applied if the Department is able to show that an individual knowingly or recklessly altered a wetland area in violation of the wetlands statute, regulations or permit conditions. Other states have criminal violations for wetlands penalties. One participant agreed that the existing fine matrix is too low and is not a deterrent.
- Another would authorize municipalities to create dam management districts that could manage the dams and levy fees on residents in district. This proposal, which stems from the 2000 Governor's Task Force on Dam Safety and Maintenance, would provide all RI municipalities with a financial tool to help maintain the state's aging dam infrastructure (private and public). These dam management districts (comprised of one or more municipalities) would be similar in nature to fire districts, wastewater management districts, and stormwater management districts. There are 505 dams. There had been some interest in passing this. Some dams are orphaned so the group knows that homeowners would be liable. Some older dams could be breached. This is not true in all cases since industrial activity in some areas have resulted in riverbeds with toxic sediment
- Clarifying the eligibility criteria for existing pollution control tax exemptions (RIGL §44-18-30(15)). Under this proposal, sales and use tax exemptions for pollution control equipment would apply exclusively to equipment purchases that directly control water and air pollution (at a particular facility), but not be available for equipment purchases that have an indirect role in the control of pollution, such as laboratory testing equipment. Gary Ezovski suggested adding burner/boiler replacement.
- Another bill would amend the commercial fishing licensing statute to add a two-month grace period with an additional fee.

The Governor submitted a cesspool phase-out bill similar to previous bills to remove high-risk cesspools. Provisions of the proposed legislation would:

- Require inspection and removal of high risk failed cesspools that predate 1968 s.

- The 5 year phase out would be determined by distance from critical water resources. Cesspool within 50 feet of the water resource in the first 5 years; 50-100 feet in the next five and 100-200 in the last five.
- 2% loans to homeowners were recommended by the Governor's Bay Planning Commission.
- The proposal also has a point of sale provision that would require purchasers of homes with cesspools to have these devices removed in a two-year timeframe. The banking industry, in many instances, require inspection of private waste water treatment systems. It is estimated that between 700 – 1000 cesspools are removed now because of the mortgage requirements.
- Require homes with cesspools to tie into sewer lines.

New Business:

a. Customer Satisfaction update

Tom Getz provided the group with an update of the 2003 permitting Customer Survey. This summer, DEM completed its second customer satisfaction survey of its major permitting programs. Approximately 1200 individuals, consultants, municipalities and individuals who applied for permits in FY 2003 were surveyed. The results of this survey showed that DEM was providing a good level of customer service with respect to its conduct in pre-application meetings, permit application review and overall effectiveness of the permit program.

Customer satisfaction varied by program and DEM provided an average to excellent level of service in all programs. Although not all the program surveys represented a statistically valid sample, the survey results in 2003 show a general improvement trend. The most typical negative response indicated that the timeliness of many of the DEM permit process could be improved. Even though there were some timeliness issues with the permitting programs there was strong support for the function of these programs. Responses from five of the six programs rated the role of the permitting process in protecting the environment at the excellent to good service level.

It is encouraging, though, that there were improvements in the ISDS and Wetlands Program survey results. In 2002, both programs were rated as needing improvement in all three program areas, i.e. pre-application meetings, permit application review and determinations and over-all satisfaction of the permitting process. The programs have improved to an average rating level. There was a significant improvement in the Pesticides program and the Waste Program maintained its excellent level of service rating.

b. DEM Updates

Brownfields Commission Update

Terry Gray discussed recommendations from the General Assembly's Brownfield's Commission.

- Tax Credits - Due to current economic conditions, it is unlikely that the tax credit provisions introduced in the past two years will pass this year. There is debate as to whether to introduce it again this year.
- Consolidation of public notice: There was a perception that when multiple permits and approvals are necessary for a project, public notice and comments periods are not coordinated, are not conducted in parallel, and unnecessarily add time to the review period from sequential notice periods. Recommended approach in legislation will be to direct DEM to coordinate public notice periods on Brownfields projects wherever possible.
- Access to tax delinquent properties for assessment: Following a statute in place in Connecticut, a new provision would provide the State or the host municipality with access to tax delinquent properties for the purposes of conducting a site assessment and exploring the ramifications of taking title to the site. More research is planned to look into the CT language and plan the exact proposal for RI.
- Designation of a lead agency for Brownfields: Following up on a long-time suggestion from GrowSmart RI, the commission is looking at designating a single point of contact for Brownfields projects. DEM is the suggested lead agency, and the bill will likely designate a non-regulatory official, such as the Chief of OTCA or the Ombudsman, as the single point of contact.
- Parallel review of projects by all agencies engaged in a project: Along the lines of the public notice issue, DEM, as the lead agency, will be directed to coordinate multi-agency reviews of Brownfields projects and assure parallel processing wherever possible. The major parallel reviews being discussed include DEM and the Historic Preservation Commission.
- An alternative to the Settlement Agreement- An alternative approach to the current process, ending in a negotiated settlement agreement, was discussed. The alternative would be a performance-based approach modeled after the new federal process. In this performance-based approach, parties would be required to conduct an appropriate level of due diligence (proposed rulemaking is pending by EPA on what would be required in the federal model and we could borrow from that as a start), compile and submit an investigation for review and approval, propose a remedy, and, after approval, implement the clean up. Compliance with this process, as documented by various DEM approvals along the way, would lead to statutory limitations on liability automatically (as opposed to negotiation of a settlement agreement). Transaction costs and delays developing and negotiating the settlement agreement are resource drains on both DEM and performing parties and can significantly prolong the approval process. Unfortunately, financial institutions may have grown to rely on these agreements as a threshold for financing projects. GrowSmart RI is researching the situation with bankers on their board. Ken Payne is interested in developing language on this alternative approach.

The Senate is interested in an alternative to settlement agreement.

Arsenic Regulations

The arsenic regulations were filed and will be in effect shortly.

SEP Policy Bank (Terry Gray)(Handout)

Terry Gray briefly discussed the SEP Policy Bank idea with the group. In December 31, 2003, copies of proposed amendments to the policy regarding the use of supplement environmental projects (SEPs) in the settlement of administrative penalties were distributed. The policy is available external review. The draft policy was distributed, which includes a new SEP definition, creates SEP bank of pre-approved projects, and provides a better definition and clearer expectations about the type of projects expected (page 3 of policy). A separate workshop is being March 9 at 1:00 pm in room 300 to present the policy and discuss any issues raised by external stakeholders.

He described the draft SEP Bank Policy for projects that could be done to settle environmental administrative case in lieu of or offsetting administrative penalties. One of the biggest SEP's involved Metals Recycling who curtailed air pollution from diesel engines that crush cars. They installed electric engines for \$1M, which was more than the penalty. In a smaller SEP municipalities met UST violation penalties by upgrading underground heating oil tanks.

Regulatory Update (Liz Stone)

DEM is required to provide the public twice a year with its regulatory agenda. DEM has released its agenda of regulations that will be proposed in the next six months. In addition, the listing includes an update of regulations that were finalized since August of 2003. Some of the regulatory developments in the next six months include:

- Revisions to the Air Toxics Regulation
- Streamlining the permitting process for combined Heat & Power and Distributive Generation Sources
- Updating of the VOC definition in the Air regulations
- Control of VOC emissions from Commercial & Consumer Products / Architectural & Industrial Maintenance Coatings
- Groundwater Quality – Update of statewide classification maps
- Freshwater Wetlands Regulation revisions
- UST Inspection frequency requirements
- Used Oil Recycling
- Site Remediation Regulations – Arsenic standard
- Mercury Added Products.

Visit the DEM website for additional information about the regulatory agenda. (<http://www.state.ri.us/DEM/index.htm>) the click on Publication / Regulations and scroll down to Proposed Regulations / Amendments.

Other**Hazardous Waste Fee**

Gary Ezovski mentioned that DEM held a hearing on the Hazardous Waste Fee and received no comments. Waste oil is the biggest issue. Waste oil is not exempt from the fee, but non-manifested materials are. Rhode Island does not require waste oil to be manifested. Many companies have stopped manifesting waste oil to avoid paying the fee. This presents an un-level playing field for some companies that disposed of waste oil in other states which require waste oil to be manifested thereby triggering the Rhode Island fee. Gary suggested that DEM look at the impacts on waste transporters.

Roundtable Coordination

Gary announced that coordination of the roundtable meetings will now be done by the Strategic Planning and Policy Office and introduced Janet Keller and Terri Bisson. He thanked Tom Getz for a job well done.